PUBLIC PROSECUTOR

v.

TAN AH HUAT

HIGH COURT, PENANG
TUAN VINCENT NG KIM KHOAY JC
[CRIMINAL TRIAL NO. 47(58)-13-87]
21 JUNE 1993

DANGEROUS DRUGS: Charge of trafficking in dangerous drugs - Whether identity of drug exhibits impugned due to same being unmarked after seizure - Whether presumption under s. 37(d) Dangerous Drugs Act 1952 has arisen - Whether rebuttal of presumption by way of raising reasonable doubt or on balance of probabilities - Whether there must be specific challenge on fundamental aspect of prosecution case - Whether accused had exclusive use of the vehicle in which the drugs were found - Whether knowledge to be presumed.

The accused was observed getting out of a car which he was driving and was seen taking a plastic bag out of the boot of the said car. An examination of the plastic bag showed that it contained drugs. The accused was charged with trafficking in heroin contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act).

The accused claimed that on the day in question he had lent his car to one Ah Bok and stated that he had no knowledge that there were drugs in the boot of the car. Counsel for the accused sought to impugn the identity of the drug exhibits on the ground that they were not initialled or marked in any manner immediately or soon after they were seized from the accused.

The questions that arose was whether the accused was required to rebut the statutory presumptions on a balance of probabilities or beyond a reasonable doubt and whether the failure of the prosecution to challange the accused on a fundamental aspect of the prosecution case was fatal.

Held:

[1] While it is desirable and necessary to have drug exhibits marked and initialled as soon as possible after they are seized, such non-marking or initialling is not by itself fatal to the prosecution case. In such a case the Court would have to examine the then prevailing circumstances at the time of the seizure of the drugs and the evidence led as to the manner in which the drug exhibits were kept. In the present case the identity of the drug exhibits had been sufficiently established by the prosecution.

[2] As the accused was found to have held exhibit P8A to C, the test to be applied in order to discharge the presumption under s. 37(d) and (da) of the Act was on the balance of probabilities. Whereas in respect of the circumstancial evidence on exhibit P13 it would be sufficient for the defence to merely raise a reasonable doubt as to whether the same belonged to the accused and the Court was not required to be convinced of the defence story.

[3] The prosecutions' failure to specifically challange the accused on a fundamental aspect of the prosecution case, that the accused had held P6 containing P8A to C in his hand, was not fatal to the prosecution case such a challenge only being necessary for the purpose of affording an oppurtunity to an accused or witness to explain or to test his veracity.

[4] The evidence showed that the accused was the *de facto* though not the registered owner of the car in which the drugs were found and this car was meant for his own use and at his disposal at all material times.

[5] In the circumstances the accused had failed to rebut the statutory presumptions that had been successfully raised against him.

[Accused found guilty and sentenced to death].

Cases referred to:

Pavone v. Public Prosecutor [1986] 1 MLJ 423 ***(cit)***
PP v. Peter Yeoh & Anor. [1993] 1 CLJ 78 ***(refd)***
PP v. Lin Lian Chen [1990] 2 CLJ 1020 ***(refd)***
Syed Ali [1982] CLJ 188 / [1982] 1 MLJ 132 ***(refd)***
Mat v. PP [1963] MLJ 263 ***(refd)***
Mohd Radhi v. PP [1991] 3 CLJ 2073 / [1991] 3 MLJ 169 ***(refd)***
PP v. Chee Kon Fatt [1991] 3 CLJ 2564 ***(refd)***

Legislation referred to:

Dangerous Drugs Act 1952, ss. 2, 37(d), (da), 39B(1)(a), (2)

For the accused - Karpal Singh; M/s. Karpal Singh & Co.
For the public prosecutor - Roslan bin Abu Bakar, DPP

JUDGMENT

Vincent Ng Kim Khoay JC:

The Accused was charged as follows:

> Bahawa kamu pada 18 September 1986, jam lebih kurang 12.20 tengahari di hadapan rumah

No. 29, Jalan Siakap 12, Seberang Jaya, Perai, dalam Daerah Butterworth, dalam Negeri Pulau Pinang, bagi pihak diri kamu sendiri telah mengedar dadah merbahaya, iaitu 601.0 gram heroin dan dengan itu kamu telah melakukan kesalahan di bawah s. 39B(1)(a) Akta Dadah Merbahaya 1952 (Semakan 1980) dan boleh dihukum di bawah s. 39B(2) Akta yang sama.

The prosecution case centered around only one material witness namely D/K Abu Bakar bin Murad (PW2) who testified as follows:

On 18 September 1986 at about 12.20 p.m. he made his rounds alone on his motor cycle in the area of Mak Mandin and when he reached Jalan Began Lallang, he saw a grey coloured Datsun Sunny motor car bearing registration No. PBG 7171 (P2) travelling from the direction of Bagan Lallang towards Permatang Pauh. He then stopped at the Jalan Bagan Lallang/Jalan Mak Mandin junction. When P2 reached Jalan Permatang Pauh/Jalan Bagan Lallang junction it turned left. At that time the weather was fine and the windshield of P2 was clear and he could see it's driver who was a male Chinese, as it was travelling at a slow speed. There was then many vehicles but he tried to trail P2. P2 was then travelling at 20 to 25 k.p.h. It turned right and entered Jalan Hussein Onn. He followed P2 for 25 minutes for around 6 kilometres.

P2 then pulled up in front of a house (later ascertained as bearing address No. 29) at Jalan Siakap 12 Seberang Jaya, Perai, Butterworth, Penang ("the said house"). P2 had not made any other stops during the period under his observation. When P2 pulled up, PW2 also stopped at a road junction at a distance of around 35 to 40 metres from where P2 had pulled up. He had a clear view of the vicinity of the said house in front of which P2 had pulled up. The said house bore address No. 29, as shown in P30E.

He then saw the driver, who was the male Chinese, get out from the car (P2), look left and right and proceed to open the boot of P2. PW2 then approached and reached the male Chinese driver who was then in the act of lifting a plastic bag P6 containing P8(A) to (C) from the boot of P2. He immediately identified himself as a police officer and caught hold of the male Chinese from behind. This resulted in the latter putting up a little struggle and dropping P6 back into the boot of P2. The male Chinese was then handcuffed. PW2 was at the time not wearing police uniform. The male Chinese was identified by this witness as the accused. PW2 then examined the contents of the plastic bag (P6) and discovered three packages wrapped in newspapers [P8(A) to (C)], and upon unwrapping one of the three packages, he found a plastic packet containing pink coloured granules (ketul-ketulan) which he suspected to be heroin. PW2 then instructed the accused to get back into the front passenger seat of P2 and he (PW2) drove same together with the accused and the contents of the boot of P2 to the police station, and left his (PW2) motorcycle at the scene of the offence.

PW2 arrived at the police station at around 1.20 p.m., got the accused out and in the presence of the accused, PW2 examined the boot of P2, wherein he found the following:

(a) One plastic bag (P6) containing three packages wrapped in newspaper [P8(A) to (C) mentioned earlier.
(b) one yellow paper bag (P10) containing 4 plastic packets [P11(A) to (D)] containing a white powder suspected to be drugs. (Later confirmed as caffeine).
(c) one plastic packet containing a whitish substance suspected to be heroin base (P13).
(d) one box (P18) containing weighing instruments (P19).
(e) one plastic packet (P15) containing empty plastic packets (P16).
(f) one metal basin (P21).
(g) one sieve (P23).
(h) one wooden spoon (P25).

After PW2 had examined the boot of P2 he took the aforesaid exhibits and the accused to the Cawangan Anti-Dadah office and wrote out a search list (P31) listing out all the said exhibits that were seized. P31 was signed by the accused, PW2 and the Investigating Officer Encik Wan Abdul Rashid bin Naim (PW4). In his examination-in-chief, when talking about P6 containing P8(A) to (C) falling back from the hands of the accused into the boot of P2, PW2 had also asserted that this drug exhibit was not broken.

Then PW4 received the exhibits from PW2 and placed them into a cabinet drawer No. 3. At about 2.20 p.m. the former led a few drug police officers together with PW2 to the said house, but could not gain entry into same as it was locked. PW2 then returned to the Police Station and lodged Prai Police Station arrest report No. 5627/86 at 4.30 p.m. on the same day of the arrest.

The Government chemist Mr. Ng Hock Sing (PW1) testified that he analysed and found (P8(A) to (C) to contain a total net weight of 187.0 grams of heroin and P13 to contain a net weight of 414.0 grams of heroin and further said that heroin is a dangerous drug as defined in s. 2 of the Dangerous Act 1952 (the Act).

At the close of the prosecution case the only point raised by Encik Karpal Singh in his submission of no case to answer is that there is doubt as to whether the drug exhibits P8(A) to (C) and P13 which were seized by PW2 about 7 years ago are the very exhibits now produced in Court. In particular it is submitted that this doubt has arisen as the said exhibits were not initialled or marked in any manner by PW2 immediately or soon after they were seized from the accused on 18 September 1986. Nor were the said exhibits marked or initialled by PW4 when they were handed to him by PW2 on the same day. The said exhibits were packed and marked "E1" and "E3" respectively with Prai Report No. 5627/86 and sealed with PDRM 40 seal by PW4 only on 20 September 1986 which is two days after they were seized. It was further submitted that initialling of all drug exhibits are very essential in a capital charge and as this was not done during the vital period between 18 September 1986 and 20 September 1986, it is fatal to the prosecution case.

In short, Counsel sought to impugn the identity of the drug exhibits P8(A) to (C) and P13 due to same being unmarked in any manner during the two days from 18 September 1986 to 20 September 1986; such unmarking, being conceded by the learned Deputy Public Prosecutor.

I have carefully studied the evidence of PW2 and PW4 in respect of the manner in which the said drug exhibits have been kept.

PW2 stated as follows:

> Kemudian saya serahkan semua barang kes dan OKT pada Insp. Wan Rashid. Setelah Insp. Wan Rashid menerima barang-barang kes dan OKT, Insp. Wan Rashid telah memasukkan semua barang kes ke dalam kabinet laci No. 3.

He further stated in re-examination as follows:

> Barang-barang kes tidak ditandatangani kerana pada masa itu semua barang-barang kes dalam lain kes pun tidak ditandatangani. Walaupun tidak ditandatangani saya boleh cam barang kes dengan pasti.

PW4 testified as follows:

> Saya telah mengambil semua barang-barang kes tersebut dan saya letakkan dalam boot kereta tersebut dan saya arahkan jurugambar Kon. Basiran bin Naim ambil satu keping gambarnya di luar dalam kawasan Ibu Pejabat Daerah Polis Butterworth. Selepas itu saya ambil barang-barang kes tersebut ke pejabat saya dan simpan di dalam kabinet besi di pejabat saya dan saya kunci. Saya tidak membuat apa-apa tanda atas barang-barang kes tersebut sebelum disimpan dalam kabinet besi. Hanya saya seorang sahaja berhak dan ada 'access' kepada kabinet besi ini. Saya seorang simpan kunci kepada kabinet ini. Tidak ada barang-barang yang berkaitan kes yang lain disimpan dalam kabinet ini.

He further said during examination-in-chief.

> Saya telah membungkus semua barang-barang kes dan saya tanda E2 hingga E8 serta laporan polis nombor Prai Report 5627/86 dan bermeteraikan angka 40 PDRM. Selepas itu saya simpan barang-barang kes itu dalam kabinet besi yang saya berkunci.

And later said:

> Setelah saya meterai barang tersebut saya simpannya dalam kabinet besi yang saya berkunci. Pada 21 September 1986 pagi saya telah bawa barang-barang kes ke Pejabat Kemia tetapi ahli kemia tidak berada dalam pejabat. Saya membawa balik ke pejabat saya dan saya simpan dalam kabinet yang saya berkunci. Pada 23 September 1986 saya hantar barang-barang kes ke jabatan kemia dan serahkan barang-barang kes kepada SP1.

While I would agree with Counsel for the defence that it is desirable and necessary to have drug exhibits marked and initialled as soon as possible after they are seized, if only to ensure that they are sufficiently identified and not mixed up with exhibits of other cases, I do not agree that non-initialling or marking of such exhibits would by itself be fatal to the prosecution case. In such cases, the Court would have to examine the then prevailing circumstances at the time of seizure of the drugs and the evidence led as to the manner in which the drug exhibits were kept. To support his contention, Encik Karpal Singh cited the case of *Pavone v. Public Prosecutor* [1986] 1 MLJ 423 and my decision in *PP v. Peter Yeoh & Anor.* [1993] 1 CLJ 78. I note that both these cases concern the requirements of sealing or packing of the drug exhibits rather than the initialling or marking of same.

However, even in the case of *Peter Yeoh & Anor.* (supra) I had said as follows:

> Whilst the non-sealing of the drug exhibits during the vital period of its custody may not by itself be fatal to the prosecution's case, the Court must nevertheless consider the other circumstances as to how such exhibit was kept, in order to arrive at a just finding.

In order to decide whether the non-initialling and marking the drug exhibits in this instant case would be fatal to the prosecution case the Court would have to consider whether there are other factors that, when coupled with the aforesaid, may be sufficient to impugn the identity of the drug exhibits.

After having taken into account the following factors I held that the identity of the drug exhibits have been sufficiently established by the prosecution:

(a) PW4 had stated that he kept the said drug exhibits locked up in a steel cabinet in which no other drug exhibits were kept and he alone had access and kept the keys to the cabinet. PW2 also said that he saw PW4 keep the said exhibits in drawer No. 3 of the cabinet. PW4's testimony that there were no other drug exhibits in the steel cabinet during the material time that P8(A) to (C) and P13 were kept therein, was never questioned or challenged in any way by Counsel.

(b) Both PW2 (in examination-in-chief) and PW4 (in re-examination) had said that they were able to identity the said drug exhibits with certainty even though same were not marked.

(c) Field weighing of the drug exhibit by PW4 gave a total weight of 1,130 grams whereas subsequent weighing by the Chemist (PW1) gave a total weight of 1,123.8 grams. Such a small differential in the two weights would be insufficient to cast any doubt as to the identity of the drug exhibits.

Thus, as it was my finding that the accused had *de facto* ownership, custody, control and exclusive use of P2 at all material times in which P13 was found, and he had held in his hand P6 containing P8(A) to (C), the prosecution had succeeded in raising a *prima facie* case against the accused and had:

(i) raised the presumption under s. 37(d) and (da) in respect of possession and knowledge of contents and trafficking of Exh. P8(A), and P8(C), being the 3 plastic packets in P6, containing an aggregate net weight of 187.0 grams of heroin.

(ii) raised sufficient *prima facie* circumstancial evidence in respect of possession, knowledge and trafficking of Exh. P13, being a double layered rectangular plastic packet in block-form containing a net weight of 414.0 grams of heroin.

I therefore called the accused to enter upon his defence in respect of Exh. P8(A) to (C) and Exh. P13.

The Accused elected to give evidence on oath and called no witnesses. As the material portions of his short evidence would be discussed in detail in conjunction with the points in Counsel's submission at the close of the defence case, I need only to state here that the accused's defence was primarily based on his assertion that on the day of his arrest, and while he was playing Jin Rummy in a coffeeshop, a character named Ah Bok borrowed P2 from him and had custody of same for the vital period from 9.00 a.m. until shortly after mid-day before he returned to the said house; and this story was largely corroborated by his cautioned statement (D35).

In his submission at the close of the defence case, Mr. Karpal Singh raised the following grounds for an acquittal of his client:

(i) The presumption under s. 37(d) of the Act does not arise in view of the ruling by the Supreme Court in *Lin Lian Chen's* case to the effect that a car is not "anything whatsoever containing" and also the authority of *Syed Ali* [1982] 1 MLJ 132. It is no more on the balance of probability but on only raising a reasonable doubt.

(ii) Upon the principles enunciated in *Mat v. PP* [1963] MLJ 263 recently applied with approval in the case of *Mohd Radhi v. PP* [1991] 3 MLJ 169, all that the defence need to do is to raise a reasonable doubt and not on a balance of probability; and the Court is not required to be convinced of the truth of the defence story.

(iii) The accused has given evidence under oath which is corroborated by D35 which should be given proper consideration.

(iv) There was no specific challenge by the prosecution that the accused was holding a

packet when he was caught from the back. There must be a specific challenge and not a general challenge on a fundamental aspect of the prosecution case.

(v) No fingerprint dusting was done on the packets. See *PP v. Chee Kon Fatt* [1991] 3 CLJ 2564 - Court is entitled to the best evidence where there is an opportunity to procure it.

(vi) It was put to SP3 that she did drive the car whereas the accused was not challenged that the converse was true. Court would have to consider whether OKT had exclusive use of the car (P2) in conjunction with his evidence on Ah Bok.

(vii) Whether on circumstancial evidence alone, the Court can conclude that the accused had knowledge of what was in the boot of P2.

I shall now state my comments and findings in respect of the above points.

I am bound by judicial precedent of a superior Court to hold that a car is not "anything whatsoever containing" and the recovery of exhibit P13 in the boot of the said car (P2) does not raise the presumption under s. 37(d) of the Act. I am not unmindful that as the accused was found to have held P8(A) to (C), the test to be applied by the Court in respect of the exhibit P8(A) to (C) in order to discharge the presumption under s. 37(d) and (da) of the Act would be on the balance of probability. Whereas, in respect of the circumstantial evidence on exhibit P13, it would be sufficient for the defence to merely raise a reasonable doubt as to whether same belonged to the accused; and the Court is not required to be convinced of the truth of the defence story.

I would firstly, have to be satisfied beyond a reasonable doubt that the accused had held P8(A) to (C).

PW2 had stated that he had followed P2 for 25 minutes when it pulled up at a house No. 29 Jalan Siakap 12, Seberang Jaya. His view was clear and not obstructed in any way. Then, he saw the accused getting out from P2 as soon as it pulled up, looking left and right and going to the boot of P2 during which time PW2 approached P2 and the accused. He then saw the accused in the act of lifting P6 containing exhibit P8A to C from the boot of P2. He was then not in police uniform. As he reached the accused he promptly identified himself as a police officer and immediately caught the accused from behind, which resulted in a small struggle and P6 dropping from the hand of the accused back into the boot of P2. Even then P6 was not torn or broken.

This piece of PW2's evidence remained unshaken in cross-examination. A noteworthy question put to the witness by Counsel was as follows:

> You identified yourself as member of the police force when the accused got down from the said car after it pulled up in front of the said house. You then said that you wanted to search the vehicle. The accused then opened the boot to enable you to search. After your search you found P6.

This question drew a negative reply from PW2, but it is not without significance that the evidence of the accused in this regard was quite inconsistent with the alleged facts intended to be projected by this question. In contrast, the accused had said, in his examination-in-chief, that when he arrived at the said, house No. 29 he got down from P2 and proceeded to open the front gate and enter the compound of his house. The accused could not get into the house as he had not brought along the keys to his house. He then visually checked the window panes of the house as in the past there had been incidents of people throwing stones at his house. After this, he returned to P2, where he met PW2 who told him that he (PW2) wanted to search P2. The accused then opened the car boot and PW2 recovered some things in the boot after the search.

Here, I have given due consideration to the point that if the accused had not brought along his house keys, then there was no reason for him to even begin to unload the boot of P2. Logically, in such an event, his next move would have been for him to get back into the driver's seat of P2 and drive back to secure the house keys, rather than to unload things from the boot of P2.

After having carefully considered the evidence of PW2 in conjunction with the evidence of the accused and also having observed that PW2's evidence has not, on this material aspect, been shaken in cross-examination, I find no reason for this Court to disbelieve PW2's version that the accused had held exhibit P6 (which contained Exh. P8(A) to (C)) soon after the accused had alighted from and opened the said boot of P2. The accused's version that he had first tried to enter his said house is unworthy of credence.

If the accused's story that soon after he had alighted from P2 he had first attempted to enter his house through the front gate and he was confronted by PW2 only upon his return to P2, was the truth, PW2 who had observed him during the material time would have seen this and consequently the said question put to him by Counsel would have been accordingly framed. The failure of Counsel to thus frame the question put to PW2, though not of very material consideration, would nevertheless be indicative of the true story that lies behind the facade.

Counsel had submitted that the DPP had not specifically challenged the accused, in cross-examination, to the effect that the accused was holding P6 containing P8A to C when he was caught from the back by PW2. It was further submitted that there must be a specific challenge and not the general challenge that was posed on this fundamental aspect of the prosecution case. While I agree that this is a fundamental aspect of the prosecution evidence, I hold that the DPP's failure to make this specific challenge would not be fatal to the prosecution case. It is my view that such a challenge in cross-examination is only necessary for the purpose of affording an opportunity to an accused or a witness to explain or to test his veracity. As Counsel had asked the accused a question in the examination-in-chief which elicited the following reply, to quote:

> What PW2 said that he saw me open the boot and held something wrapped from inside same and PW2 immediately held me from behind, and succeeded in apprehending me after some struggle, is not true,

it is obvious that if the same question had been put to the accused by the DPP the Court would have received the same negative reply. As such, I find no reason to hold that the DPP's failure to challenge the accused as aforesaid - undoubtedly due to his inexperience though not without creditable endeavour for a novice at prosecution - is of any consequence to the prosecution case.

As PW2 had testified in examination-in-chief that the accused had held P6 containing P8(A) to (C), the non-dusting of the drug exhibits for fingerprints is not fatal to the prosecution case. As he also said that P6 had remained unbroken and untorn after same had fallen from the hands of the accused into the boot of P2, the evidence of the chemist (PW1) that the white powdery substance (as appeared in photo P3B) near the centre of the floor mat of the boot of P2 was caffeine with traces of heroin found on the rest of the floor mat and that he did not detect any heroin or morphine from the nail clippings and hand swaps that he took from the accused on 19 September 1986 at 11.00 a.m. (the day after the arrest), have not created a dent on the prosecution case.

I shall now turn to consider Exh. P13 found in the boot of P2 which, unlike P8(A) to (C), was not at the material time held by the accused, and to determine whether the latter had succeeded in raising a reasonable doubt in the Court's mind to rebut the *prima facie* circumstantial evidence that had been raised against the accused at the end of the prosecution case.

It is common ground that P13 was found in the boot of P2 and that the accused was the sole occupant of P2 at the time he was arrested.

The wife of the accused Lee Ah Moy (PW3) had stated in evidence that she was the registered owner of P2 but the instalment payments for same were made by the accused. She also said that she did not hold a driving licence and did not know how to drive a car. She had stood firm on this even under cross-examination. She said that during the period before the arrest, the accused was staying with her and their three children at No. 29, Jalan Siakap 12 (the said house). However, on the day before the day of the arrest, the accused had driven out in P2 and no one had come to look for the accused. According to her P2 was used by the accused but she did not know whether anyone had borrowed same from the accused, and the accused held the keys to P2. In cross-examination she firmly asserted that she had never driven P2.

Whereas, the accused had testified that his wife had used P2 though she did not own a driving licence. Presumably when he said "used" he meant "drive". Also in his caution statement (D35) the accused had said that his wife had used P2, as she could drive it though she had no licence. The accused however also stated in D35 that he had bought P2 in order to go to work although same was registered in his wife's name. In his oral evidence he stated that he did not own a vehicle at the material time.

On this aspect of the evidence it is the Court's findings that the accused was a *de facto* though not a registered owner of P2, and P2 was meant for his own use and at his disposal at all material times.

There is no reason for the Court to disbelieve PW3's (accused's wife) story that P2 was a car meant for the accused's use and that she never drove P2 as she was unable to drive any car.

However, the material and vital part of the accused's evidence for judicial consideration is that at 9.00 a.m. on the day of his arrest that is 18 September 1986 he was in a coffeeshop in Sg. Puyu, Butterworth playing Jin Rummy with a few of his friends. At that time P2 was parked in front of the said coffeeshop, when a friend of his by the name of Ah Bok came up to him and asked to borrow P2. The accused then loaned P2 to Ah Bok by handing over the car keys for P2 to the latter. Ah Bok took P2 away and returned same to the accused shortly after mid-day. Soon after the return of P2, the accused drove same on his return to his said house. Upon his arrival, the events aforesaid occurred.

The accused's story concerning the character "Ah Bok" and the loan of P2 to Ah Bok is substantially corroborated by the contents of his caution statement (D35). Under cross-examination and also in D35 he had stated that he did not know the full name of Ah Bok or his full address and that he had known Ah Bok for 6 to 7 months before the date of his arrest. In his oral evidence he said that he had once worked together with Ah Bok in the same location and had also played Jin Rummy with Ah Bok before. They had gone out together before and had also given each other meal treats. He said that though he did not know the full address of Ah Bok the latter stayed in the Raja Uda area in Butterworth. Also, Ah Bok had borrowed P2 from him on several occasions.

Now, it is pertinent here to consider what value to attach to D35.

I note after careful study of the accused's evidence in Court in conjunction with D35, that the sum total of his evidence had the effect of merely suggesting that the offending exhibits, belonged to one Ah Bok or had been put into the boot of P2 by Ah Bok or it was intended to show that he did not have exclusive possession of P2 at the material time before his arrest. In D35, when he was asked "Do you know what was found in the back boot of your car by police?" he answered "I do not know the contents of the packet and the police did not say anything but arrested me and brought me to the police station".

It is important for the Court to determine whether the story about Ah Bok could probably be true, as according to the accused Ah Bok was the only person who had control and custody of P2 during the crucial several hours prior to his arrest. D35 was recorded on 19 September 1986 at 3.20 p.m. whereas the accused was arrested at 12.45 p.m. on 18 September 1986, which was about 26 hours later, thus giving the accused ample time and opportunity to ruminate and frame his reply to the questions in D35.

It is most incredible that the essential particulars about Ah Bok - with whom the accused claimed to have gone out, eaten, gambled, worked together and, not to mention, often loaned P2 to Ah Bok - had completely escaped the attention or memory of the accused.

For the above reasons, I hold that this character Ah Bok was an intangible creature of convenience and indeed a saviour of design - often expressed as a figment of his imagination - conjured up by the accused during the long hours in detention between his arrest and the recording of D35. As it is my finding that Ah Bok is non-existent and the accused was the *de facto* owner, and had sole control and custody of P2 at all material times before his arrest, the strong and irresistible circumstantial evidence that P13 belonged to him has not been rebutted by the accused. He has thus failed to raise a reasonable doubt in the Court's mind as to his having had sole possession and custody and control of P13. Also, by the same token, and for the other reasons, I am satisfied that the presumptions under s. 37(d) and (da) of the Act raised against the accused in respect of exhibit P8(A) to (C) has not been rebutted by the accused in his defence, on a balance of probability.

In the event, I find the accused guilty as per the amended charge and convict him and pronounce the mandatory sentence of death provided for under the law.